IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.6722 OF 2005

John Verges D'Souza. ... Applicant.
Versus.
The State of Maharashtra. ... Respondent.

Mrs.Glady Pereira for the Applicant.
Ms.S.D.Shinde, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 18th October, 2005.

P.C.:

1. Heard the learned Advocate for the Applicant and the learned A.P.P. for the State.

2. Offence registered against the Applicant and co-accused is under section 395, 397, 307 of the Indian Penal Code read with sections 3, 25(1)(a) of the Arms Act. The allegation of the prosecution is that on 24th December 2005 five unknown persons came to Khardi branch of the Thane District Central Cooperative Bank and committed dacoity by taking away cash in the sum of Rs.3,43,320/-. The allegation is that one of them fired a shot by revolver in the bank. The Applicant was arrested on 25th December 2004 and test identification parade was held on 22nd March 2005. The learned Advocate for the Applicant submitted that the test identification parade cannot be taken into account as it has been held belatedly. The learned Advocate for the Applicant submitted that after completion of investigation the Applicant is entitled to be enlarged

on bail.

3. The learned A.P.P. pointed out that apart from the test identification parade there is recovery of Rs.7000/- at the instance by the Applicant. The learned A.P.P. also contended that the Complainant and three witnesses have identified the Applicant and therefore, no case is made out for enlarging the Applicant on bail.

4. I have considered the submissions. The test identification parade is held after about 87 to 88 days from the date of arrest of the Applicant. Four witnesses have identified the Applicant in the test identification parade without ascribing any specific role to the Applicant. However, atleast two of the eye witnesses could not identify the Applicant. The identification parade was itself held belatedly.

5. The other piece of evidence referred to is recovery of Rs.7000/- at the instance of the Applicant. There is no material on record to show that the currency notes which were recovered at the instance of the Applicant were the subject matter of offence. There are no criminal antecedents of the Applicant on record. If this is the material on record against the Applicant, a case is made out for enlarging the Applicant on bail, subject to stringent conditions.

6. Hence the following order is passed:

(i) The Applicant shall be enlarged on bail in connection with C.R.No.187 of 2004 registered with Shahapur Police Station, subject to furnishing a personal bond of Rs.20,000/- with one or two local sureties in the like amount.

(ii) The bail is granted subject to condition that the Applicant will report to the concerned Police Station on every Saturday till conclusion of trial.

(iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(iv) The Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

(v) Any observation made in this order shall

not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(vi) Application is disposed of in above terms.

(vii) The parties to act upon an authenticated copy of this order.

Judge.